IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No.673/2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A..P. Lavande, J**
DATE : 20.3.2007

Heard Shri A.M. Ghare, the learned counsel for the appellants.

2. This appeal is directed against the Judgment and decree dated 19.9.2001 passed by the Additional District Judge, Akola in Regular Civil Appeal No. 101/1997 filed against the Judgment and decree dated 5.3.1997 passed by the Civil Judge, Jr. Dn., Balapur in Regular Civil Suit No. 156/1988.

3. The appellants/ original plaintiffs had filed the above suit for declaration , possession and permanent injunction. The plaintiffs challenged the Judgment and decree passed in Regular Civil Suit No. 139/77 by which the

possession of the suit property was given to defendant no.1. According to the plaintiffs, the decree was liable to be set aside on the ground of fraud. However, no particulars were pleaded in the plaint. Therefore, the trial court dismissed the suit. The lower appellate court also concurred with the findings given by the trial court and dismissed the appeal filed by the plaintiffs.

4. Mr. A.M.Ghare, learned counsel for the appellants/ plaintiffs submitted that the findings given by the trial court and confirmed by the lower appellate court are contrary to the evidence on record and as such perverse. According to Mr. Ghare, the plaintiffs had led evidence to prove that the decree passed in Regular Civil Suit No. 139/77 was obtained by fraud and, therefore, both the courts below have erred in law in non in suiting the plaintiffs.

5. Having considered the submissions made by Mr. Ghare and having perused the records I do not find any merit in the submissions made by the learned counsel. The

finding of the trial court that the plaintiffs had not given particulars of the fraud which vitiates the decree passed in Regular Civil Suit No. 156/88 is a finding correctly arrived at by the trial court. It is settled law that in order to set aside the decree on the ground of fraud the plaintiff has not only to give the particulars of the fraud but also to prove the same by leading cogent evidence. The plaintiffs in the present case have done neither. Therefore, the Judgments passed by both the courts below cannot be faulted. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

Judge

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